



# USER'S GUIDE TO THE HERNDON ZONING ORDINANCE

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## 13. Board of Zoning Appeals

(see Zoning Ordinance § 78-200.3, *Board of Zoning Appeals*, § 78-201, *Review Procedures*, 78-202.4, *Variances*, and § 78-202.12, *Appeals from the Certain Decisions and Determinations by the Zoning Administrator*)

*The Town of Herndon Zoning Ordinance User Guide series provides the public with general information on land use regulations affecting activities undertaken by the public and administered by the Herndon Department of Community Development. It is not intended to be a complete statement of all applicable regulations. Individuals are encouraged to contact the Department of Community Development at 703-787-7380 for complete permitting requirements.*

### What is the Board of Zoning Appeals?

In Herndon, the Board of Zoning Appeals consists of five members appointed by the Town Council. The Board is charged with the specific duty of ruling on certain zoning questions. It reviews applications where a property owner seeks a variance from a specific zoning provision due to certain types of hardship or unusual circumstances. It also reviews appeals from members of the public about decisions by the Zoning Administrator regarding:

- land use determinations;
- administrative adjustments;
- temporary uses;
- Zoning Inspection Permits; and
- Zoning Appropriateness Permits.

### What is a "Variance"?

The Code of Virginia and the Town Council of Herndon allow for a formal process, called a Variance, of considering how zoning regulations may affect certain hardship situations. A Variance is a relaxation of a specific zoning provision. It is reviewed upon request on a case by case basis and may be approved only when the Board of Zoning Appeals finds that

- owing to special circumstances or conditions beyond the property owner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the strict application of the terms of the Zoning Ordinance would result in unnecessary or unreasonable hardship;

- such need is not shared generally by other properties;
- the relaxation of a zoning provision would not be contrary to the public interest or intent of the Zoning Ordinance; and
- the application does not involve a change in use from those permitted in Article IV of the Zoning Ordinance.

A Variance may not be used to allow the establishment or expansion of a use otherwise not permitted.

In authorizing a Variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure for use as it may deem necessary in the public interest. The Board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be in compliance.

### What is a "Zoning Administrator Determination"?

The Code of Virginia and the Town Council of Herndon vest the Zoning Administrator with the unique legal authority to interpret zoning regulations and to make final decisions about how the regulations may or may not apply to a specific property or situation. Usually a request is made to the Zoning Administrator to make such a final decision. The Zoning Administrator's response is documented in formal correspondence to the person making the request. This correspondence is the "Zoning Administrator Determination." When the person who initiated the request, or another interested person, disagrees with the finding of the Zoning Administrator, the person has the right to appeal the finding to the Board of

Zoning Appeals. The Board of Zoning Appeals may overturn the Zoning Administrator's determination, amend it, or affirm it.

### **What is the process for applying for a Variance or for filing a Notice of Appeal?**

The Board of Zoning Appeals holds a public hearing on the fourth working Thursday of every month as indicated on the Herndon Town Calendar. The meetings are held at 7:30 p.m. in the Herndon Council Chambers located at 765 Lynn Street, Herndon, Virginia. The meetings are held in the main Town Council Chamber. Applicants are requested to attend the public hearing when the application is discussed. If an applicant is not present or not represented by another person to answer questions regarding the application, it is probable that the application will be postponed or denied.

Application forms are available from the Department of Community Development. For a Variance, other materials must be submitted with the application. The deadline for filing new applications is 30 days prior to the regularly scheduled public hearing. It is the applicant's responsibility to ensure that the application is complete. Applications that are

late or incomplete will not be placed on the Board's agenda. Meetings with the staff prior to the submission deadline are encouraged and may be arranged by appointment.

A listing of deadline dates, meeting dates and times is provided for your reference.

### **What happens after the Board Takes Action?**

If approved by the Board of Zoning Appeals, the Variance or Appeal often takes effect immediately. The Town notifies the applicant officially of the action by the Board. A Variance becomes a part of the zoning record for the subject property and is filed in the Department of Community Development for future reference. An appeal that amends or overturns a Zoning Administrator determination becomes part of the official record for the Zoning Ordinance and affects future interpretations of the Ordinance.

If the application involves new development or redevelopment, the applicant then enters the process of Site Plan Review to obtain approval for site development. A separate application would be submitted for review by either the Architectural Review Board (if outside the Heritage Preservation Overlay District) or the Heritage Preservation Review Board (if inside the Heritage Preservation Overlay District.)

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### **Need more information?**

Have a question regarding required permits, the permit process, or application requirements? Call or make an appointment to see a member of staff in the **Department of Community Development at 703-787-7380**.

Have a question regarding Building Permits or construction codes? Call or make an appointment to see the **Building Official at 703-435-6850**

Visit the Town of Herndon on the web at [www.herndon-va.gov](http://www.herndon-va.gov) for the Zoning Ordinance User Guide series or to access the Town Code. Town offices are located at the Herndon Municipal Center at 777 Lynn Street, Herndon, Virginia, 20170.

### **User's Guide to the Zoning Ordinance Series**

#### **TOWN OF HERNDON**

*Enriching the Quality of Life and Promoting a Sense of Community*

1. Neighborhood Meetings and Public Participation in the Planning and Zoning Process
2. Zoning Map Amendments
3. Signs
4. Special Exceptions
5. Site Plan Review Procedures
6. Single Lot Development
7. Chesapeake Bay Provisions
8. Traffic Impact Studies
9. Subdivision Site Plans
10. Unified Commercial Subdivisions
11. Performance Guarantees
12. Heritage Preservation Regulations
13. Board of Zoning Appeals
14. Conducting a Business in the Home
15. Fences
16. Accessory Structures
17. Summary of Permitted and Allowed Uses in the Zoning Districts
18. Summary of Dimensional Standards in the Zoning Districts
19. Commercial Vehicle Parking in Residential Districts
20. Parking on Lots with Single-Family Detached Dwellings
21. Landscape and Buffer Requirements
22. Explanation of Variances, Waivers, Adjustments, and Exceptions
23. Fee Schedule
24. Temporary Use Permits, Special Events
25. Day Care, Child Care, Preschool and Home Day Care
26. Zoning Inspection and Zoning Appropriateness Permits
27. Written (Mailed) Notification to Adjacent Property Owners for Scheduled Public Hearings
28. Refuse Collection on Private Property
29. Exterior Lighting Standards
30. Vacating a Street Right-of-Way
31. Portable Storage Units
32. Building Location Surveys
33. Water Quality Impact Assessments
34. Chesapeake Bay Provisions for Homeowners: Step by Step Approval Process for Single Family Detached and Duplex Dwellings
35. Roll Off Dumpsters
36. Bed and Breakfast Establishments